As far as I can see if not for the successful skin grafting on some areas, the condition of the affected parts of the body can be worse. The remaining scars still look to me to mar the appearance, especially the scars below the right ear, over the right shoulder and under the armpit. They bear burn marks. They do not look to me to be sightly, and I have no doubt that they are a source of embarrassment to the plaintiff, particularly when he undresses. Some are shiny and look like healed scars of Hanson's disease. The scars below the ear are always exposed and would be the subject of stares from onlookers. In all the circumstances of this case, in my considered opinion, the sum of $12,000 would be appropriate and reasonable sum of damages.

Special damages have been agreed upon at $1,600. Interest on general damages at 6% and special damages at 3% from 24th August, 1970, the date of service of the writ. Costs to the plaintiff.

Order accordingly.

Solicitors: *Saleh, Suppiah & Singh; Khoo & Sidhu; Devadas & Co.*

CHAN PENG FOOK v. KAN PAK LEE

[O.C.J. (Hashim Yeop A. Sani J.) February 16, 1974]
[Seremban — Civil Suit No. 167 of 1970]

Road Traffic — Road accident — Negligence — Possibility of danger — Special duty to take precaution — Contributory negligence — Highway Code, s. 25 — Road Traffic Ordinance, 1958, s. 59(4).

Damages — Leg — 1/6" shortening — Abrasions.

The plaintiff, a carpenter, was involved in an accident and was admitted to hospital with the following injuries: abrasions on most of the right side of his body, i.e. over his right forehead, right elbow etc. and a fracture at the midshaft of the tibia on left leg resulting in shortening of 1/6th of an inch.

There was evidence in this case that the defendant had in fact seen the plaintiff walking in an unsteady manner about 3 ft. from the edge of the road. When he first saw the plaintiff the defendant was about 40 - 50 yds. away. He admitted that he did not slow down until the plaintiff was 10 - 15 ft. away. He swerved to the left when the plaintiff was crossing the road and was near the centre of the road.

Held: (1) when the possibility of danger was apparent there was a special duty created by section 25 of the Highway Code to take precautions and the failure to take them was negligence;

(2) on the question of contributory negligence, the evidence showed that the plaintiff attempted to cross the road before first ensuring that the road was clear and therefore the blame should be apportioned — *viz* defendant ¾ and plaintiff ¼;

(3) general damages in this case should be classified under two headings;

(i) fracture of midshaft of the left tibia resulting in shortening of 1/6th of an inch should be awarded $3,000/-;

(ii) the remaining injuries, i.e. abrasions, should be awarded $1,200/-.

Liability based on ¾ against the defendant.

Case referred to:-

(1) *Nance* v. *British Columbia Electric Railway* [1951] A.C. 601 at p. 611.

CIVIL SUIT.

Foo Nyong Tiam for the plaintiff.

Miss Kandiah for the defendant.

Hashim Yeop A. Sani J.: This is a claim under the Civil Law Act, 1956 for damages arising from injuries sustained in a road accident between motor car No. JE 8793 driven by the defendant and the plaintiff, a pedestrian. The accident occurred on 10th February, 1970 at Jalan Tembak, Seremban. At the time of the accident both the defendant and the plaintiff were proceeding in the direction of Jalan Temiang.

As is usually the case there are two versions of the accident. The plaintiff's version is that while he was walking about 1 ft. from the edge of the road on left side of Jalan Tembak towards Jalan Temiang, he was knocked down by the plaintiff's car from behind. It would appear that from the way the plaintiff demonstrated to the court how the accident occurred it was the plaintiff's case that he was in fact hit by the defendant's car directly from the rear.

The other version of the accident is that of defendant and his witness one Chan Siew Ming, a passenger in defendant's car at the material time. According to the defendant he was driving along Jalan Tembak when he saw the plaintiff walking "unsteadily" in front about 40-50 yards ahead of him in the same direction. When he first saw him the defendant said the plaintiff was about 3 ft. from the edge of the road and he hooted his car horn. When the plaintiff was about 10-15 ft. away from the defendant the defendant saw the plaintiff wanting to cross the road from the left to the right. The defendant said he tried to avoid the plaintiff by swerving to the left as the plaintiff was already on the middle of the road but his car hit the plaintiff on the offside front portion of the car. According to the defendant he was travelling at about 20 miles per hour as the road was not a metalled road and when he saw the plaintiff about 10-15 ft. away he slowed down to a little less than 20 miles per hour. According to Chan Siew Ming. the passenger in defendant's car, when the plaintiff was about 14 ft. ahead of them the defendant sounded his horn. At that time the plaintiff was already about 1/3rd across the road. When the plaintiff heard the sound of defendant's horn he tried to turn around probably to return to the left side of the road at which time the defendant swerved to the left to avoid him and the collision occurred.

Looking at the injuries sustained by the plaintiff as described in enclosure (10) of the Agreed Bundle of Documents, the version of the defendant would appear to be more probable. When the plaintiff was examined by the Medical Officer, General Hospital, Seremban, soon after admission to Hospital, abrasions were found mostly on the right side of the plaintiff, *i.e.* over his right forehead, right elbow etc. and a fracture was seen at the midshaft of the tibia on left leg, all these injuries being consistent with the knock from the left side of the plaintiff and upon impact he fell on his right side contrary to plaintiff's own version.

On the question of negligence the conduct of the defendant at the material time must be considered in the light of the existing law of negligence. Section 59(4)

of Road Traffic Ordinance, 1958 provides that failure on the part of any person to observe any provisions of the Highway Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings, whether civil or criminal, be relied on by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings. We have evidence in this case that the defendant had in fact seen the plaintiff walking in an unsteady manner about 3 ft. from the edge of the road. When he first saw the plaintiff the defendant was about 40-50 yards away. There is no evidence that the defendant reduced his speed at this juncture. He himself admitted in his evidence that he did not slow down until when the plaintiff was 10-15 ft. away. He swerved to the left when the plaintiff was crossing the road and was near the centre of the road.

Section 25 of the Highway Code reads as follows: —

"25. A driver must stop if by so doing he can avoid an accident or even the risk of an accident. Often a driver sees a situation building up which may lead to an accident but goes obstinately on secure in the thought that he is in the right, until it is too late to take any effective action...."

According to *Mazengarb's* Negligence on the Highway — Fourth Edition Page 102, the legal standard of care always remains the same in the sense that it is what a reasonably prudent man would have done in like circumstances. A motor car has now become a lethal weapon and the standard of skill and care which the law demands from the driver is very high. The duty imposed on the driver is not so high as would be unfair to an average person or such a standard as to unduly hamper transport and transit in a modern system. The standard required in my view is that which implies acceptance of the fact that when a man is at the steering wheel of a motor vehicle he is in effect in control of a lethal weapon.

In this case the defendant saw the plaintiff walking in an unsteady manner about 3 ft. from the edge of the road and there was certainly a possibility of the person wanting to cross the road. Under such circumstances it has been said when the possibility of danger is apparent there is a special duty to take precautions and the failure to take them is negligence. This is what section 25 of the Highway Code is all about.

The next question I have to consider is whether the plaintiff was not himself also guilty of contributory negligence. The conduct of the plaintiff at the material time is to be tested against the principle cited by Lord Simon in *Nance* v. *British Columbia Electric Railway* —[1]

"... But when contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such a defence is to prove ... that the injured party did not in his own interest take reasonable care of himself and contributed, by this want of care, to his own injury."

There is no evidence that the plaintiff took a proper lookout while on the public road. Since the accident could not have happened in the manner as he described, it can only be concluded that he attempted to cross the road before first ensuring that the road was clear of traffic.

On the evidence therefore I apportion the blame in respect of this accident as follows — *viz* defendent 2/3rd and plaintiff 1/3rd.

On quantum, the specials have not been specifically proved. In any case I consider it reasonable to make an award of $60 for cost of transport incurred while plaintiff was in hospital as well as an outpatient after discharge. As regards his claims for loss of earnings the plaintiff did not call either his old employer who paid him on piecemeal basis or his present employer who is alleged to be paying him on a monthly basis. But what is in evidence and not disputed is that the plaintiff is a carpenter. Assessing his earning as that of an average carpenter, I would put his average income as $150 per month. Plaintiff was hospitalized for about one month from the date of accident and was discharged on 10th March, 1970 and was an outpatient until the plaster on his left-leg was removed in second week of May, 1970.

According to the report of the Specialist Surgeon, General Hospital, Seremban, in enclosure (11) in Agreed Bundle of Documents, the plaintiff was again examined on 25th August, 1970 and it was found that the fracture of the midshaft of the left tibia was well united although there was some tenderness at the fracture sight and some swelling of the left leg. According to the Specialist these will persist for another 6 to 8 weeks and would gradually subside. Judging from the injuries sustained I would consider that the plaintiff would be out of work for a total period of about six months. Therefore the amount of total loss of earnings would be $900. I dismiss the other claims for special damages as not sufficiently proven.

I would classify general damages under two headings. Under the first heading is the fracture of the midshaft of the left tibia which resulted in shortening of 1/6th of an inch. I would make an award of $3,000 for this injury.

I classify the remaining injuries under the second heading and make a general award of $1,200.

On the basis of 2/3rd liability I make the following awards against defendant in favour of plaintiff: —

(1)	Special Damages —		
	(a) Loss of earnings 2/3rd of $900	$ 600	
	(b) Transport expenses 2/3rd of $60	40	
	making a total of		$ 640.00
(2)	General damages 2/3rd of $4,200		2,800.00
and (3)	Costs.		

I also order interest at 6% in respect of general damages with effect from date of filing of writ and 3% in respect of special damages from date of accident.

Order accordingly.

Solicitors: *Murphy & Dunbar; Khoo & Sidhu.*